IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 26278 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOK LEYLAND FINANCE. - Petitioner(s)
Versus
KALUBHAI VALLABBHAI JAYANI, & 3 - Respondent(s)

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Appearance :

MR ABHISHEK M MEHTA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,
MR MAULIK J SHELAT for Respondent(s) : 2,
MR NEERAJ SONI, AGP for Respondent(s) : 3,
MS FALGUNI PATEL, AGP for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 12/07/2007

ORAL JUDGMENT

The petitioner is the financer of respondent no. 1 who has

purchased a vehicle bearing registration no. GJ-14-T-187. It is under hire-purchase agreement. In the record of the Regional Transport Authority the vehicle stands in the name of respondent no. 1 subject to hypothecation with the petitioner. Similarly in the policy of insurance, the name of respondent no. 1 is reflected as owner subject to hypothecation with the petitioner. The said vehicle unfortunately was destroyed in fire due to short circuit. Hence respondent no. 1 lodged a claim with insurance company i.e., respondent no. 2. The said claim was not accepted by respondent no. 2. Hence respondent no. 1 approached Amreli District Consumers Grievances Redressal Forum by filing Consumer Complaint No. 74 of 2003. The complaint was allowed by the said Forum and therefore, respondent no. 2 - insurance company was required to pay Rs.4,21,422/- to respondent no. 1. It has deposited the said amount with the Consumer Forum. It is the say of the petitioner that by virtue of the hire-purchase agreement, the vehicle is of the ownership of the petitioner. According to the petitioner, respondent no. 1 initially paid 4 to 5 instalments towards the outstanding amount and thereafter he stopped paying the same. Thus, the ownership of the said vehicle still remains with the petitioner. In view of the same, the petitioner has preferred appeal before the State Commission at Ahmedabad being Appeal No. 1189 of 2006 challenging the decision of the Consumer Forum directing respondent – insurance company to pay the aforesaid amount to respondent no. 1. The appeal is pending for final disposal.

1.1. In the present petition the petitioner has prayed that it be allowed

to have the decretal amount lying with the Consumer Forum subject to the outcome of the appeal pending before the State Commission.

2. I have heard Mr. Abhishek Mehta, learned advocate for the petitioner, Mr. Maulik J Shelat, learned advocate for respondent no. 2 and Mr. Neeraj Soni, Ld. AGP for respondent no. 3 and Ms. Falguni Patel, Ld. AGP for respondent no. 4. It is the submission of Mr. Mehta that considering the fact that till the hire-purchase agreement does not culminate into a sale with the complete payment by respondent no. 1 to the petitioner, the ownership remains with the petitioner and, therefore, the petitioner be allowed to withdraw the amount lying with the Forum during the pendency of the appeal. Respondent no. 1 though served has not appeared. Mr. Shelat, learned advocate for respondent no. 2 has no objection if the petitioner is allowed to withdraw the amount as stated above. The Ld. AGPs have submitted that the Court may pass appropriate order in the facts of the case.

3. Having carefully considered the submissions of the learned advocates for the parties and having carefully perused the record of the petition, it clearly appears that the issue with regard to entitlement to have the decretal amount is pending for consideration before the State Commission. This very issue has been raised by the petitioner before the State Commission and it pleaded that since the petitioner was not made party before the Consumer Forum and since the hire-purchase agreement is still not fully honoured, the petitioner is the owner of the vehicle in question, therefore, the petitioner is

entitled to have the compensation and not respondent no. 1. When this is so, even by making prima-facie observations in favour of the petitioner, I cannot preempt the decision of the Commission. However, there is some substance in the submission of Mr. Mehta that at least the amount be directed to be placed in fixed deposit in a nationalized bank so as to ensure its safety as well as to earn interest thereon. In the circumstances, the submission of Mr. Mehta appears to be in the interest of all concerned. Hence, Amreli District Consumers Grievances Redressal Forum is directed to place the decretal amount in a nationalized bank in fixed deposit initially for a period of six months and if by that time the appeal is not decided, for further period of six months, subject to final outcome of the appeal. The petitioner will also be entitled to make application, by way of interim relief, for withdrawal of the amount during the pendency of the appeal before the Commission.

In view of the above, the petition is partly allowed. Rule made absolute to the aforesaid extent.

[Akshay H Mehta, J.]

* Pansala.